

the filing of the bill, and of its substance and object, and of the same day by him fixed, not less than four months subsequent to the publication, for the defendant's appearance in court, either in person or by solicitor; and on the defendant's failing to appear, and on satisfactory proof of the notice published, the chancellor, on motion, may proceed in the same manner as is prescribed by law in the case of a bill filed against a nonresident; provided, that the said defendant have the same privilege as is herein before given to an absent heir, to appear, either before or after a decree; and every part of the provision herein contained, respecting the proceedings on appearance of such heir, shall be construed to extend to such evading defendant.

4. AND BE IT ENACTED, That in case any cause hath been or shall be set down regularly for hearing, or submitted to the chancellor by both parties, as ready for his decision, and one of the parties hath died, or shall die, after such setting down or submission, and before a decree passed, having a solicitor in court, the said cause shall not abate, and the chancellor may decree as if such deceased party were alive, and the decree shall have the same effect as if it had been passed against the deceased, except that it shall not entitle the complainant to a preference in the distribution of assets, either real or personal.

Certain causes shall not abate, &c.

5. AND, whereas it is doubtful whether or not there is any method of proceeding, whereby a person, holding land jointly or in common with an infant residing out of the state, may obtain partition of the said land, BE IT ENACTED, That on a bill filed, for the purpose of obtaining partition of land held jointly or in common with an infant residing out of the state, the chancellor, on the complainant's motion, may direct a commission to issue unto three persons, such as he shall approve, authorising them, or any two of them, to go to the infant, and appoint a guardian for the purpose of answering and defending the suit, and authorising them likewise to take the answer and return it to the court; and in receiving such answer, there may be the same proceedings as if the defendant had been regularly summoned, and had been heard by a guardian appointed by the court.

Chancellor may direct a commission to issue, for obtaining partition of land held jointly or in common with a non-resident infant, &c.

By 1794, ch. 69, s. 8, the chancellor may order and decree partition to be made in case any infant, idiot, &c shall have a joint interest or interest in common with any other person in lands, &c.

By 1818, ch. 193, s. 11, the provisions of this section, concerning partition, are extended to cases where all the persons reside out of the state.

NOVEMBER SESSION, 1798.

CHAP. LXXXIV.

An Act respecting Proceedings in the High Court of Chancery. Lib. Passed Jan 18 1799
JG. No. 3, fol. 164.

WHEREAS doubts have arisen, under the existing powers vested in the court of chancery, that the production of books and papers in the possession of either complainant or defendant, and which relate to the matters in issue between the parties, cannot be compelled or enforced, whereby in many instances the ends of justice cannot be obtained; therefore,

Preamble